



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

)	ISCR Case No. 15-02195
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

07/20/2016

Decision

CREAN, Thomas M., Administrative Judge:

Applicant failed to provide adequate documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On January 22, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 4) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on February 13, 2013. (Item 6, Personal Subject Interview (PSI)) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On September 17, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance*

Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant received the SOR on October 6, 2015. He answered the SOR on October 22, 2015, admitting the three financial allegations with explanation. He elected to have the matter decided on the written record. (Item 3) Department Counsel submitted the Government's written case on December 15, 2015. Applicant received a complete file of relevant material (FORM) on January 6, 2016, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not file a reply to the FORM. I was assigned the case on May 5, 2016.

Procedural Issues

Applicant was advised in the FORM that the summary of the PSI with an OPM agent (Item 6) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate. He could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the PSI summary. Applicant did not respond to the FORM, so he waived any objection to the admissibility of the PSI summary. I will consider information in the PSI in my decision.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is a 58-year-old quality specialist for a defense contractor. He is a high school graduate who has continuously worked for the defense contractor for over 27 years. This is his first request to be granted eligibility for access to classified information since he left active military service with an honorable discharge in 1983. He has been married since October 1983 and has two adult children and one minor child. (Item 4, e-QIP, dated January 22, 2013; Item 6, PSI, dated February 13, 2013)

The SOR lists and a credit report (Item 5, dated January 29, 2013) confirms the following delinquent debts for Applicant: a credit card charged off for \$28,670 (SOR 1.a); medical debt in collection for \$89 (SOR 1.b); and a store credit card in collection for \$18,586 (SOR 1.c). The amount of delinquent debt is \$47,345. The debts were reported in the credit report at Item 5. The SOR 1.a credit card debt is listed as charged off with last activity in July 2007. The SOR 1.b medical debt is listed in collection with date of last activity in August 2008. The SOR 1.c credit card debt is reported in Item 5 in collection with date of last activity in January 2013, the date of the credit report. None of the debts appear on the latest 2015 credit reports. (Item 7, dated February 23, 2015; and Item 8, dated August 31, 2015)

Applicant reported that his financial problems started in 2008 when his wife lost a job paying over \$60,000 annual in the mortgage industry. She was unemployed until 2012 when she secured employments paying only minimum wage. He also had two children in college and was paying tuition and expenses. His son had taken one of the credit cards and charged a large amount on the card. The two large debts were from credit cards he and his wife used for household purchases. He told the security investigator that the accounts were closed and he does not plan to make payments on the accounts. The medical debt was for his son and has not been paid. He told the security investigator he intends to look into the medical debt and resolve it as soon as possible. He reported the credit card debts in response to financial questions on his e-QIP. (Item 4, e-QIP, dated January 22, 2013; Item 6, PSI, dated February 13, 2013)

Applicant noted on his e-QIP that his house was foreclosed in October 2012 because of his wife's loss of employment. Later in the PSI, Applicant told the security investigator that he and his family moved into a trailer on his mother-in-law's property. He is now meeting his financial obligations and is living within his means. While he has not paid his SOR financial obligations, he is willing to do so when money becomes available. (Item 6, PSI, dated February 13, 2013, at 3)

Applicant has not presented any documentation or information to show he paid any of the debts. In his response to the SOR, Applicant stated he assumed that all of the debts had been removed because he has not received correspondence from his creditors in years. He had been paying his debts until his wife lost her job in the mortgage industry. He and his wife are hardworking people that hit upon bad financial times and did the best they could. They are now on track financially. (Item 3, Response to SOR, dated October 22, 2015)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to

classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, thereby raising questions about an individual’s reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage finances in such a way as to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant’s history of delinquent debts is documented in a credit report. The evidence is sufficient to raise security concerns

under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises both an inability and an unwillingness to pay delinquent debt.

I considered the following Financial Consideration Mitigating Condition under AG ¶ 20:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation) and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past due debt which is the cause of the problem and provided documented proof to substantiate the basis for the dispute or provide evidence of actions to resolve the issue.

None of the mitigating conditions apply. Applicant's unpaid debts are a continuous course of conduct and thus current, even though the debts are no longer listed on his latest credit reports. The debts were incurred in the normal course of everyday living, but were caused by conditions beyond Applicant's control when his wife lost her good paying employment in the mortgage industry. However, Applicant has not established that he has acted reasonably and responsibly under his financial circumstances. Applicant has not presented any documentation to show that he has taken any steps to repay any of the SOR debts. Applicant also did not indicate that he received financial counseling.

Applicant has not established a good-faith initiative to pay his debts. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation.

A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. It is a proceeding aimed at evaluating and applicant's judgment, reliability, and trustworthiness. The facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy debt in a timely manner must be considered. Applicant has not established a plan to pay the debts and has not shown a meaningful track record of debt payment. He has not presented documentation to show any contact with the creditors or any payments he made on the debts. Applicant's debts seem to have come off his credit reports merely by the passage of time. To show good faith, Applicant must do more than simply wait for his debts to come off his credit reports. The security significance of Applicant's financial history does not turn on whether Applicant's debts could or could not legally be listed on credit reports after the passage of a set number of years

There are security concerns about Applicant lack of action about his delinquent debts. Applicant's debts have not been paid, and Applicant has not presented a reasonable plan to resolve his financial problems. Applicant has not shown that he acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his financial obligations. With evidence of delinquent debt and no documentation to support responsible management of his finances, it is obvious that Applicant's financial problems are not under control, that Applicant is not managing his personal financial obligations reasonably and responsibly, and that his financial problems are not behind him.

Applicant's lack of documented action is significant and disqualifying. There is ample evidence of irresponsible behavior, lack of good judgment, and unreliability because Applicant failed to document payment of any of his delinquent debts. Based on the identified debts and the failure to make arrangements to pay his debts, it is clear that Applicant has not been reasonable and responsible in regard to his finances. His failure to act reasonably and responsibly towards his finances is an indication that he may not protect and safeguard classified information. Applicant has not presented sufficient information to mitigate security concerns for financial considerations. Based on all of the financial information, I conclude that Applicant has not mitigated security concerns based on financial considerations.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of

rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to classified information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has not provided sufficient credible documentary information to show reasonable and responsible action to address delinquent debts and resolve financial problems. Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve financial issues. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation and his personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a -1.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge